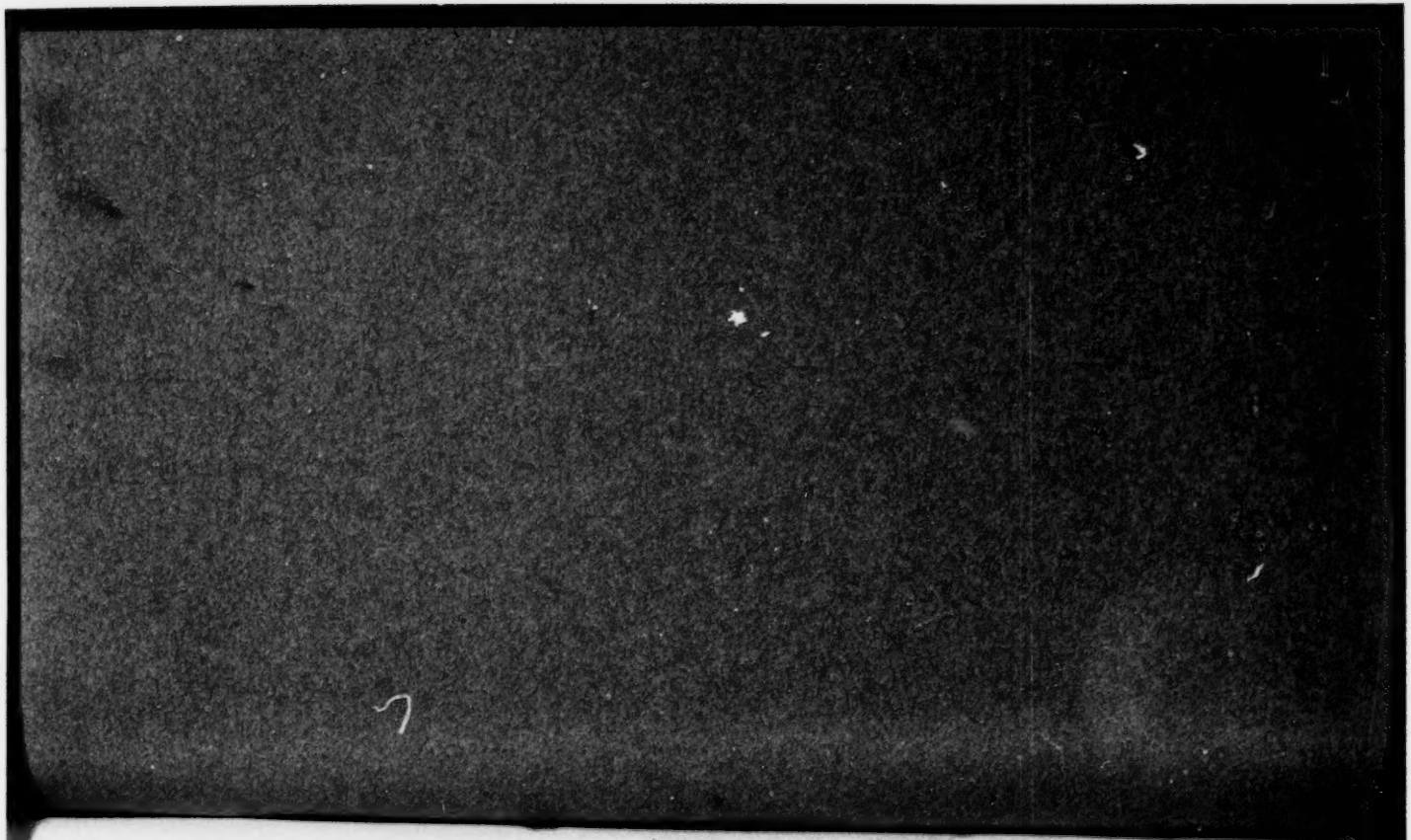

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1904.

The Central of Georgia Railway Company, Plaintiff in Error, VERSUS A. O. Murphey & Hunt, Defendants in Error.	In Error to the Supreme Court of the State of Georgia.

BRIEF FOR DEFENDANT IN ERROR.

1. This case has been before the Supreme Court of Georgia twice, and in both instances the decision of this Court was favorable to the Defendants in Error. The case is first reported in 113th Ga., page 514; and after a second trial reached the Supreme Court again, and is found reported in 116th Ga., page 863. This last decision is now up for review by the Supreme Court of the United States.

2. Doubts are always resolved in favor of the constitutionality of the Statute. The violation must be clear and palpable in order for the statute to be held unconstitutional.

Cooley's Constitutional Limitations (6th ed.), pages 216 to 220, and cases cited.
Ogden vs. Saunders, 12 Wheat. 213 and 270.
Munn vs. Illinois, 94 U. S. 113 and 125.
Cooper vs. Telfair, 4 Dall. 14 and 19.
Plumley vs. Massachusetts, 155 U. S. 461 and 479.
Carey et al. vs. Giles, 9 Ga. 253 and 258 (4 and 5).

3. Under the facts in this case, the shipment of grapes was damaged by the negligence of one of the carriers which handled the shipment.

Original record in this case, pp. 43, 44, 45, 46, 47 and 48.
Printed record in this case, pp. 31, 32, 33 and 34.
Central etc. Ry. Co. vs. Murphey & Hunt, 113 Ga. 514 and 520 (2).

(a) Such being the case, and the initial carrier having failed to trace the freight and give to the shipper the required information, under the terms of the Statute under review, it became "liable for the value of the freight lost, damaged or destroyed in the same manner, and to the same extent as if said loss, damage, or destruction occurred on its own line." The law under the facts in this case imputes the negligence to the Defendant Company, and makes the same, in effect, its negligence.

Code of Ga. of 1895, Section 2318.
Central etc. Ry. Co. vs. Murphey & Hunt, 113 Ga. 514 and 520 (2).

4. The Statute in question merely sets up a rule of evidence, and establishes a legal presumption to be deduced from the failure of the carrier to trace the freight and give the required information. This the State Legislature may do without violating the Federal Constitution.

Central etc. Ry. Co. vs. A. O. Murphey et al., 116 Ga. 863. (The decision under review here.)
Jones vs. Brim, 165 U. S. 180.

5. The Statute in question is really the converse of the last part of Section 2298 of the Code of Georgia of 1895. Said Section being as follows: "Where there are several connecting railroads under different companies and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus, and until delivery to the connecting road; the last company which has received the goods 'as in good order' shall be responsible to the consignee for any damage open or concealed, done to the goods, and such companies shall settle among themselves the question of ultimate liability." This last recited Statute has been held not to violate the Commerce clause of the Federal Constitution, or to be an attempt to regulate interstate commerce, but merely to create a legal presumption.

Kavanaugh & Co. vs. So. Ry. Co., 120 Ga. 62 and 64.

(a) Both these Statutes are remedial in their nature; they do not affect the shipment or the process of transportation. They recognize the helpless disadvantage under which the shipper is

placed in locating the cause of the damage to his goods, and relieve him of the difficult and impossible task of locating the blame and the cause of the loss, and place this duty upon the carrier who has all the facilities and means at hand for tracing the shipment.

Original record, pages 60, 61, 62 and 63.
Printed record, pages 42, 43 and 44.
(Decision in this case in the Court below, 116 Ga. 863.)

6. The Statute under consideration was in force at the time the contract of shipment was made in this case, and therefore was a part of the contract and of the consideration thereof.

7. The Court below in this case held as matter of fact that the railroad company could have traced the freight and given the required information within the time provided; and this is borne out by the record.

Original record, pages 65 and 66.
Printed record, page 46.

(a) The Statute in question came up before the Supreme Court of Georgia again in the case of the Southern Ry. Co. vs. Ragsdale, et al., in 119 Ga. 773, and the ruling made in the case at bar was adhered to. A strong intimation was given by the Court in this last case to the effect that if the railroad company should prove that it was impossible for it to trace the freight and give the required information within the time provided, such would be a defense to the action. In the case at bar, however, the Court held affirmatively that the facts offered in evidence by the Defendant were not sufficient to make out such a defense.

8. A railroad company is not compelled to make a contract to forward goods beyond its own line.

Coles vs. Railroad Co., 86 Ga. 251.
A. T. etc. R. R. Co. vs. R. R. Co., 110 U. S. 668 and 680 (bottom page).

(a) But when it receives goods consigned to a point beyond its own line, it undertakes to transport them to their destination, and if the goods are lost or damaged, it will be liable therefor, in the absence of a contract otherwise limiting its liabilty.

Falvey vs. R. R. Co., 76 Ga. 597.
Hutchinson on carriers (2nd ed.), sections 145 to 152 inc.

(b) However, it may by express contract, limit its liability to its own line.

Central Ry. Co. vs. Avant, 80 Ga. 195.
R. & D. R. R. Co. vs. Shomo, 90 Ga. 500 (top page).

(c) Such being the state of the law in Georgia, and the shipper not being able to hold the carrier with which he dealt liable, on account of the limitations which were put in the contracts of shipment in pursuance of the decisions cited under Section (b) above, and the shipper not being able to discover how or where his goods were damaged, and being thus entirely helpless in the premises—all the avenues of information being closed to him—the Legislature of Georgia came to his relief and gave him a remedy by enacting the Statute under consideration.

(d) The contract under which the goods were shipped in this case was made in Georgia, and is governed by the laws of that State.

Liverpool etc. Co. vs. Ins. Co., 129 U. S. 397.

9. The Defendant Railroad Company "being affected with a public interest," and being a Georgia corporation, and being clothed with special privileges, is therefore subject to legislative control in the interest of the public.

Munn vs. Illinois, 94 U. S. 113.
Ga. R. R. Co. vs. Smith, 128 U. S. 174.
Chicago etc. Ry. Co. vs. Pullman Car Co., 139 U. S. 79 and 90.
Smyth vs. Ames, 169 U. S. 466 and 544.

10. The Statute under consideration does not violate the Commerce clause of the Federal Constitution, nor does it attempt to regulate interstate commerce. States may, in the exercise of their reserved powers, enact laws which, though they incidentally relate to and affect commerce between the States, yet are not to be considered as regulations of that commerce within the meaning of the Constitution of the United States.

Sherlock vs. Alling, 93 U. S. 99 and 103.
Peik et al. vs. Chicago, etc., Ry. Co. et al., 94 U. S. 164.
Bagg vs. Wilmington etc. Ry. Co., 109 N. C. 279, and cases cited.
Kidd vs. Pearson, 128 U. S. 1 and 16.
Fry vs. State, 63 Ind. 552.
Williams vs. Fears, 179 U. S. 270 (affirming 110 Ga. 584).
Smith vs. Alabama, 124 U. S. 465.
Nashville etc. Ry. Co. vs. Alabama, 129 U. S. 96 and 100.
Missouri etc. Ry. Co. vs. Haber, 169 U. S. 613 and 626.
New York etc. R. R. Co. vs. New York, 165 U. S. 628, 631 and 632.
Chicago etc. Ry. Co. vs. Solan, 169 U. S. 133 and 137.
Richmond etc. R. R. Co. vs. Patterson Tobacco Co., 169 U. S. 311.
(Affirming 24 S. E. Rep. 261 (Va.).)
St. Joseph etc. R. R. Co. vs. Palmer, (Neb.), 22 L. R. A. 335.
Hart vs. Ry. Co., 69 Ia. 485, and cases cited.
McCann vs. Eddy, 133 Mo. 59.
Missouri etc. Ry. Co. vs. McCann, 174 U. S. 580.

11. The Statute in question comports with sound public policy and with responsibility placed upon carriers by the common law and the statutes and decisions of the various States and of the United States. The shipper and the carrier are on an unequal footing, and the carrier is therefore held to rigid responsibility.

Code of Georgia of 1895, Section 2264.
Central Ry. Co. vs. Hasselkus et al., 91 Ga. 382 (2 and 3).
Penn. R. R. Co. vs. Hughes, 191 U. S. 477 and 489.
Balti. & Ohio R. R. Co. vs. Voigt, 176 U. S. 498, 505 and 507.
New York etc. R. R. Co. vs Lockwood, 17 Wall. 357.
Bank of Ky. vs. Adams Ex. Co., 93 U. S. 174.
Ry. Co. vs. Stevens, 95 U. S. 655.
Missouri etc. R. R. Co. vs. McCann (subra), 174 U. S. 580.
Brockway vs. Express Co., 178 Mass. 257.
Ohio etc. Ry. Co. vs. Tabor, 98 Ky. 503.

Chicago etc. Ry. Co. vs. Solan (supra), 169 U. S. 133.
Central Ry. Co. vs. Lippman, 110 Ga. 665.

(a) In McCann vs. Eddy, 133 Mo. 59, the Court in construing the statute there involved said, "It imposes no burden or restraint, but does that which every State has a right to do, namely, to provide and regulate the remedy when a cause of acion arises."

(b) In construing the Statute of Virginia, somewhat similar to the one in question, this Court said: "The concluding sentence of the Statute imposing upon the carrier a duty, where the loss has not happened on the carrier's own line, to inform the shipped of this fact, is but a regulation manifestly within the power of the State to adopt."

R. & A. R. R. Co. vs. Tobacco Co., 169 U. S. 311 and 316 (top page).

12. The United States Supreme Court will generally adopt the construction placed upon a statute of a State by the court of last resort of such State.

Sioux City Trust Co. vs. Trust Co., 172 U. S. 642.
Postal Tel.-Cable Co. vs. Adams, 155 U. S. 688.
Geer vs. Conn., 161 U. S. 519.
Railroad tax cases, 92 U. S. 575.

13. The Statute under consideration facilitates the safe transportation of goods, and is therefore constitutional. As the U. S. Supreme Court stated in the case of Chicago etc. Ry. Co. vs. Solan, in 169 Ga. 133, "A statute is in no just sense a regulation of commerce which does not undertake to impose any tax upon the company or to restrict the persons or things to be carried or to regulate the rate of tolls, fares or frieght. A State may enact a statute, the object and effect of which are to make it more sure that railroad companies shall perform the duty resting upon them by virtue of their employment as public carriers, to use the utmost care and diligence in the transportation of passengers and goods. * * * They (such laws) are not in themselves regulations of interstate commerce, although they control in some degree the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon

the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limit."

(a) As stated by this Court in the case of Missouri etc. Ry. Co. vs. Haber, in 169 U. S. 613 and 635, "These cases all proceed upon the ground that the regulation of the enjoyment of the relative rights and performance of the duties of all persons within the jurisdiction of a State, belong primarily to such State under its reserved power to provide for the safety of all persons and property within its limits."

(b) In the case of The Lake Shore etc. Ry. Co. vs. Ohio, in 173 U. S. 299 (top page), this Court said: "These Statutes are all sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce, and having been enacted only to protect the public safety, the public health or the public morals, and having a real substantial relation to the public ends to be accomplished, were not to be deemed absolutely forbidden because of the mere grant of power to Congress to regulate interstate and foreign commerce, but are to be regarded as only incidentally affecting such commerce, and valid until superseded by legislation by Congress on the subject."

The Court in this case quoted with approval the language of Chief Justice Shaw, in 7 Cush. 53 and 85, that the States have power "to make and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same."

The Court also in this case quoted with approval the following language from Cooley's Constitutional Limitations (6th ed.) page 715, to-wit: "It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railroad companies as carriers of persons and goods, to accommodate the public impartially and to make every provision for carrying with safety and expedition."

The Court in this case further said: "Outside of the field directly occupied by the general government under the powers granted to it by the Constitution, all questions arising within a state that relate to its internal order or that involve the public convenience or the general good, are primarily for the determination of the State, and that its legislative enactments relating to those subjects and which are not inconsistent with the State constitution, are to be respected and enforced in the courts of the Union, if they do not by their operation directly entrench upon the authority of the United States or violate some right protected by the National Constitution. * * * It may be that such legislation is not within the police power of the State, as those words have been sometimes, though inaccurately used. But in our opinion the power, whether called public, governmental or legislative, exists in each state by appropriate enactments not forbidden by its own constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons within its jurisdiction and therefore to provide for the public convenience and the public good."

Lake Shore etc. Ry. Co. vs. Ohio, 173 U. S. 285 and 297.

This language fits the statute in question.

14. The other contention of the Plaintiff in Error that the Statute in question deprives it of its property without due process of law, is not well taken. The Railroad Company was duly served with notice and process and has had its day in Court.

Chicago etc. Ry. Co. vs. Zernicke, 183 U. S. 582 and 587.
Missouri Ry. Co. vs. Mackey, 127 U. S. 205.
Minneapolis etc. Ry. Co. vs. Herrick, 127 U. S. 210.
Missouri Pac. Ry. Co. vs. Humes, 115 U. S. 512.
Walker vs. Sauvinet, 92 U. S. 90.
St. Louis etc. Ry. Co. vs. Mathews, 165 U. S. 1.
Jones vs. Brim, (supra), 165 U. S. 180.

Respectfully submitted,
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